

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/6/2019

C O R A M
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition Nos.5361 of 2018 and 3937 of 2019

Writ Petition No.5361 of 2018

R. Ganesh Prabhu

... Petitioner

Vs

1. The State
rep. By its Secretary
Home Department, Fort St. George
Chennai 600 001.

2. The Deputy Commissioner of Police
R 3 Police Station
Ashok Nagar
Chennai 600 083.

3. The Deputy Commissioner of Police
Theyagaraya Nagar District
Theyagaraya Nagar
Chennai 600 017.

4. The Commissioner
Greater Chennai Corporation
Chennai.

(R.4 suo-motu impleaded, as per order,
dated 11/9/2018 by SMKJ & SPJ)

5. The Chennai Hotel Association
rep. By its President
Mr.M.Ravi
Office at Ramdas Rao Maligai
No.26 Venkatesan Street
T. Nagar, Chennai 600 017.

... Respondents

PRAYER in W.P.No.5361 of 2018: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to directing the respondent Police to refrain from interfering with the timings of the hotels/restaurants without following due process of law.

For petitioners ... Mr.G.Thyagarajan
For respondents 1 to 3 ... Mr.E.Manoharan,
Addl. Govt. Pleader

For 4th Respondent ... Mr.K.Soundararajan

For 5th Respondent ... Mr.Sathish Parasaran
Sr.Counsel
for Mr.Vijayna Subramanian

Writ Petition No.3937 of 2019
The Chennai Hotel Association
rep. By its President Mr.M.Ravi
having its Office at Ramadas Rao Maligai
No.26 Venkatesan Street
T. Nagar
Chennai 600 017.

... Petitioner

Vs

1. The State
rep. By Secretary
Home Department, Fort St. George
Chennai 600 001.
2. The Commissioner
Greater Chennai Corporation
Chennai 600 003.
3. The Deputy Commissioner
(Revenue & Finance)
Greater Chennai Corporation
Chennai 600 003.
4. The Commissioner of Police
Greater Chennai Police
No.132 EVK Sampath Road
Vepery
Chennai 600 007.
5. The Director General of Police
No.601 Dr. Radhakrishnan Salai
Mylapore
Chennai 600 004.

... Respondents

PRAYER in W.P.No.3937 of 2019: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the third respondent made in R.D.C.No.LB/5551/2018 dated 9/11/2018, quash the same and consequently, forbear the respondents from interfering with the working hours of the members of the petitioner Association, their Eateries, Hotels, Restaurant.

4. According to the petitioner, neither the Tamil Nadu Catering Establishment Act, 1958 nor the Tamil Nadu Shops and Establishments Act, 1947, gives any power to the police to restrict the time for running a restaurant or hotel. Petitioner would state that in the absence of any law which authorises the authorities to fix timings for restaurants, hotels etc., Police cannot on its own fix timing and direct hotel and restaurant to close after a

particular time.

5. Notice was issued on the petition.

6. Section 279 of the Chennai Municipal Corporation Act, provides for, grant of license by the Commissioner, to run eating house, tea shop, coffee house, cafe, restaurant, refreshment room or any place, where the public are admitted for consumption of any food or drink or any place where food is sold or prepared for sale:

7. Section 7 of the Tamil Nadu Shops and Establishments Act, 1947, prescribes that State Government may by a general order, fix the timings of Shops and Establishment.

8. However, Section 30 of the Tamil Nadu Catering Establishment Act, 1959, states that Tamil Nadu Shops and Establishments Act, 1947, shall not apply to Catering establishments.

9. The word 'day' has been defined in the Tamil Nadu Catering Establishments Act, 1958, as follows:-

"Period of twenty-four hours beginning at midnight.

Provided that in the case of an employee whose hours of work extend beyond midnight, day means the period of twenty-four hours beginning from the time when such employment commences."

10. During the course of hearing, this Court felt though Police cannot fix time for closure of the catering place, the same can only be regulated by the Government. On 11/10/2018, this Court, has passed the following order:-

"On instructions from the License Inspector, Greater Corporation, Chennai, Mr.E.Manoharan, learned Additional Government Pleader submitted that both the Corporation of Chennai and Commissioner of Police, Chennai, had discussions, regarding framing/formulating guidelines for fixing specific time limit for hotels/restaurants/eateries.

2. Learned Additional Government Pleader further submitted that details of the discussion and frame work as to how regulations/guidelines could be made, would be submitted in the next hearing date.

3. Mr.E.Suseendra Babu, Licence Inspector, present in Court, submitted that Corporation of Chennai, is the authority to grant licence to all kinds of hotels, including star hotels.

4. Greater Corporation of Chennai is directed to submit a list of hotels/restaurants/eateries permitted near railway stations/bus stand.

11. Pursuant to the said order, dated 11.10.2018, a meeting has been conducted by the Deputy Commissioner (R & F), Greater Chennai Corporation, Revenue Department on 09.11.2018. Participants in the meeting were officers of Greater Chennai Corporation and officials of Greater Chennai City Police. Minutes of the meeting, dated 09.11.2018, reads as under:-

"The Deputy Commissioner (R & F) and Commissioner i/c welcomed all the participants and started that the Hon'ble High Court in W.P.No.5361 of 2018 filed by R.Ganesh Prabhu, came up for hearing on 11/10/2018 and the Greater Chennai Corporation was directed to fix timing for various restaurants and eateries based on the facts such as their locations. Law and order and protection of the public in consultation with the Commissioner of Police Greater Chennai City.

Deputy Commissioner of Police (St. Thomas Mount) stated that all the shops in Chennai City should be closed by 12.00 p.m., otherwise movement of the public could not be controlled. If permitted beyond, snatching and robbery may occur. No special permission needs to be given.

It was also informed that special conditions to be stipulated in the Trade licence, if any on the police side could be consulted and suggested.

Based on the discussions and suggestions and other parameters like public safety, law and order and control of floating population, it is proposed to fix the closing time of restaurants based on the location as classified by CMDA.

Proposed closing time of restaurants located in CMDA area classification

S.NO.	Area classification	Timings
1.	Residential area	11.00 p.m.
2.	Mixed Residential area	12.00 a.m.
3.	Commercial area	01.00 a.m.

Deputy Commissioner (R & F) thanked all the participants and conducted the meeting."

12. Minutes of the Meeting, dated 9/11/2018, is the subject matter of challenge in W.P.No.3937 of 2014, which has been filed by Chennai Hotel Association and the prayer in the writ is to call for the records of the Deputy Commissioner of Revenue and Finance, in R.D.C.No.LB/5551/2018, dated 9/11/2018, and quash the same.

13. Since both the writ petitions deal with the same subject matter, they are clubbed together and heard.

14. Heard Mr.Sathish Parasaran, learned counsel for the petitioner in W.P.No.3937 of 2019, Mr.G.Thyagarajan, learned counsel for the petitioner in W.P.No.5361 of 2018 and Mr.E.Manoharan, learned Additional Government Pleader for the official respondents.

15. Section 39 of the Madras City Police Act, 1888, gives the power to the Commissioner of Police to make rules for ensuring order and decency and for public safety. Section 39 of the said Act, reads as under:-

"The Commissioner may make rules for ensuring order and decency and for the public safety at all places of public entertainment or resort, and for regulating the times during which the places referred to in Sections 34 and 35 shall be allowed to be open or used and from time to time may rescind or alter such rules; and in case of breach of any such rules or of the conditions of the licence granted under Section 36, may order such places to be closed, and while such order is in force such places so ordered to be closed shall be deemed to be unlicensed places."

16. Mr.Sathish Parasaran, learned counsel appearing for the petitioner, in W.P.No.3937 of 2019 contended that there are no rules, giving powers to the Police, to fix timings of shops. Reliance was placed on a judgment of the Hon'ble Division Bench of this Court in W.A.(MD) No.547 of 2017, dated 1/9/2017 [The Commissioner of Police Vs. E.Navaneethakrishnan], wherein, the Hon'ble Division Bench, observed as under:-

"5. Accordingly, the writ appeal stands disposed of by giving liberty to the appellant to frame any rules, by exercising the power under Section 39 of the Madras City Police Act, 1988. It is made clear that till such rule is brought forth, the activity of the respondent/writ petitioner, as recorded by the learned Single Judge, cannot be curtailed. No costs. Consequently, connected Miscellaneous Petitions are closed."

17. Similarly, in W.P.(MD) No.18787 of 2017, the learned Single Judge of this Court, vide, order, dated 20/2/2018 [Anna Perundhu Nellaya Vattara Viyabarigal Nalla Sangam Vs. The State of Tamil Nadu], has observed as under:-

"6. A perusal of the order passed by this Court in W.P.(MD) No.11410 of 2016 shows that one

Navaneethakrishnan has filed a writ of mandamus to direct the Police officials to permit him to carry on his hotel business during late night hours. This Court has allowed the said writ petition, directing the police officials not to insist the petitioner to close down his restaurant between 12 midnight and 04.00 a.m. Further, it was ordered that however, if the petitioner makes any encroachment in the public street, the police are entitled to take suitable action against the petitioner and remove the encroachment. Challenging the said order, the police officials have preferred an appeal in W.A. (MD) NO.547 of 2017 and the same was disposed of on 1/9/2017. The operative portion of the said judgment reads as follows:-

"5. As long as power is available to the Commissioner of Police, Madurai City, the same can be exercised as per law. However, in the absence of any rule, which can be brought forth by exercising power under Section 39 of the Madras City Police Act, 1888, running of business cannot be curtailed.

7. From the aforesaid decision, it is clear that in the absence of any rule, which can be brought forth by exercising power under Section 39 of the Chennai City Police Act, 1888, it is not open to the Police officials to stop the members of the petitioner Association from doing their lawful business.

8. Admittedly, so far, rules have not been framed by the Commissioner of Police by exercising the power under Section 39 of Chennai City Police Act, 1888 and therefore, the respondents cannot restrain the members of the petitioner Association from doing their lawful business during night hours."

18. Mr.Sathish Parasaran, learned counsel appearing for the petitioner in W.P.No.3937 of 2019, would also contend that the Government also cannot frame Rules, under the Tamil Nadu Shops and Establishments Act, 1947, for the reason that Tamil Nadu Catering Establishments Act, 1958 specifically excludes the applicability of the Tamil Nadu Shops and Establishments Act, 1947, to eateries.

19. We cannot agree with the contention of Mr.Sathish Parasaran. Tamil Nadu Shops and Establishments Act, 1947, was enacted, for regulation of shops and establishments, in State of Tamil Nadu.

20. "Establishment" has been defined, under Section 2

(6) of the Tamil Nadu Shops and Establishments Act, 1947, reads as under:-

"Establishment" means a shop, commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishment as the State Government may by Notification declare to be an establishment for the purposes of this Act.

(emphasis supplied)

21. Section 13 of the Tamil Nadu Shops and Establishments Act, 1947, reads as under:-

"13. Opening and closing hours of shops -

(1) Save as provided by or under any other enactment for the time being in force, no establishment shall be opened earlier or closed later than such hours as may be fixed by the State Government, by a general or special order in that behalf:

Provided that in the case of a restaurant or eating house, any customer who was being served or was waiting to be served therein at the house fixed for the closing may be served during the quarter of an hour immediately following such hour.

(2) Before passing an order under sub-Section (1), the Government shall make an inquiry in the prescribed manner.

(3) The Government may, for the purposes of this Section, fix different hours for different establishments or for different areas or for different times of the year."

22. A reading of the above, would make it clear that Section 13 of the Tamil Nadu Shops and Establishments Act, 1947, gives the power to the Government, to fix the opening and closing hours of shops.

23. Tamil Nadu Catering Establishments Act, 1958, was brought into force to provide for regulation of conditions of work in catering establishments. This Act, therefore, cannot be applied for closing and working hours of shops and establishments which includes restaurants and eateries.

24. Section 39 of the Tamil Nadu Catering Establishments Act, 1958, extracted supra, excludes the applicability of Tamil Nadu Shops and Establishments Act, 1947, for catering units and can be made applicable only to such of those provisions, which are related to conditions of work, in the Tamil Nadu Catering Establishments Act, 1958. Both Acts, therefore, operative in their respective fields. The applicability of the Tamil Nadu Shops and Establishment Act is not fully excluded in all respects for

catering establishment.

25. Since Section 2 (6) of the Tamil Nadu Shops and Establishments Act, 1947, specifically includes restaurant and eating houses. All the provisions of the Tamil Nadu Shops and Establishments Act, 1947 would be made applicable to restaurants and eating houses, except those clauses which deals with the conditions of work (of an employee), which are specifically covered, under the Tamil Nadu Catering Establishments Act, 1958. If the argument of Mr.Sathish Parasaran is accepted, then the words "restaurant", eating houses, residential hotel, in the definition of establishment, as given in Section 2 (6) of the Tamil Nadu Shops and Establishments Act, 1947, would become odious. Section 13 gives the power to the Government to regulate the timings for restaurants and eateries.

26. It is well settled that it is the duty of the Courts to avoid conflicts. (Refer 2018 (3) SCC 412 INDORE DEVELOPMENT AUTHORITY Vs. SHAILENDRA (Dead) THROUGH LEGAL REPRESENTATIVES AND OTHERS and RAJ KRUSHNA BOSE Vs. BINOD KANUNGO AND OTHERS {AIR 1954 SC 202}).

27. The Hon'ble Supreme Court in Bengal Immunity Co. Ltd. v. State of Bihar, (1955) 2 SCR 603, has held that it is a cardinal rule of construction that in a Statute, where there are two provisions, which are in conflict with each other such that both of them cannot stand, they should, if possible, be so interpreted that effect can be given to both, and that a construction which renders either of them inoperative and useless should not be adopted except as the last resort. The same principle will apply to the two Acts brought by the State. Doctrine of Harmonium Instrument has to be applied to give full meaning of the words "restaurant", eating houses and residential hotel, in the Tamil Nadu Shops and Establishments Act, 1947.

28. In order to give the full meaning to all the words in the definition of "establishment" given in Section 2 (6) of the Tamil Nadu Shops and Establishments Act, 1947 and keeping in view the purpose, for which, Tamil Nadu Catering Establishments Act, 1958, has been enacted, meant only to regulate the conditions of work in catering and establishment, it has to be said that the government has the power to fix timings, for catering establishments, under Section 13 of the Tamil Nadu Shops and Establishments Act, 1947.

29. The Hon'ble Supreme Court in LIC v. D.J. Bahadur, 1981 (1) SCC - 315, observed as under:-

49. The next logical question then is as to whether the ID Act is a general legislation pushed out of its province because of the LIC Act, a special legislation in relation to the

Corporation employees. Immediately, we are confronted with the question as to whether the LIC Act is a special legislation or a general legislation because the legal maxim *generalalia specialibus non derogant* is ordinarily attracted where there is a conflict between a special and a general statute and an argument of implied repeal is raised. Craies states the law correctly: [Craies on Statute Law, 1963 Edn, PP 376-77]

"The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, is said not to apply if the prior enactment is special and the subsequent enactment is general, the rule of law being, as stated by Lord Selbourne in *Sewards v. Vera Cruz* [Mary Sewards v. Owner of the "Vera Cruz", (1884) 10 AC 59, 68], 'that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. There is a well-known rule which has application to this case, which is that a subsequent general Act does not affect a prior special Act by implication. That this is the law cannot be doubted, and the cases on the subject will be found collected in the third edition of Maxwell is *generalalia specialibus non derogant* - i.e. general provisions will not abrogate special provisions.' When the legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms."

50. The crucial question which demands an answer before we settle the issue is as to whether the LIC Act is a special statute and the ID Act a general statute so that the latter pro tanto repeals or prevails over the earlier one. What do we mean by a special statute and, in the scheme of the two enactments in question, which can we regard as the special Act and which the general? An implied repeal is the last judicial refuge and unless driven to that conclusion, is rarely resorted to. The decisive point is as to whether the ID Act can be displaced or dismissed as a general statute. If it can be and if the LIC Act is a special statute the proposition contended for by the appellant that the settlement depending for its sustenance on the ID Act cannot hold good against Section 11 and Section 49 of the LIC Act, read with Regulation 58 thereunder. This exercise constrains me to study the scheme of the two statutes in the context of the specific controversy I am dealing with."

30. Applying the said principle, it can be said that insofar as power to fix the time, for opening and closing hours of shops is concerned, power exists with the Government, under the Tamil Nadu Shops and Establishments Act, 1947, and those power can be exercised, for ensuring order and public safety. A meeting has been conducted by the Deputy Commissioner (R & F), wherein, the officers of Greater Chennai Corporation and Police have met and a status report has been filed before us. The report as filed in this Court reads as under,

"4. By G.O.Ms.No.1304, Home (Police - VIII) Department, dated 8/9/2007, the Government directed that grant of licence for running eating houses, boarding and lodging houses by Police Department under Section 35 of the Chennai City Police Act, 1888, be done away with. The said G.O also stipulated that the Municipal Corporation should obtain "No Objection Certificate" from Commissioner of Police before granting licence for eating houses, boarding and lodging houses with regard to traffic clearance report.

I submit the Chennai City Police Act, 1888 has been amended by Act 43/2007 and as per Section 35 (2) of the Act, no enclosed place or building shall be used as an eating house, boarding house, lodging house or hotel, shall be permitted by the Corporation without obtaining a no objection certificate from the Commissioner of Police, with regard to traffic clearance, for the first time.

I submit that pursuant to that proceedings of the Principal Secretary/Commissioner, Corporation of Chennai was issued vide R.D.Hq.C.No.M4/0603/2015 dated 4/3/2015 to obtain Police NOC for processing new trade licence under Section 279 of CCMC Act, 1919 and licence/Registration certificate for lodging house under Public Health Act, 1939, for the first time. Thereafter, the licences are issued as stated above.

7. I submit a meeting was convened with police officials on 25/10/2018.

Based on the discussions and suggestions and other parameters like public safety, law and order and control of floating population, it is proposed to fix the closing time of restaurants based on the location as classified by CMDA.

Proposed closing time of restaurants located in CMDA area classification

S.NO.	AREA CLASSIFICATION	TIMINGS
1	Residential area	11.00 p.m.
2	Mixed Residential area	12.00 a.m.
3	Commercial area	01.00 a.m.

31. A perusal of the status report would show that no final decision has been taken. Since the matter is only at the proposal stage, Writ Petition No.3937 of 2019, challenging the impugned proposal, dated 9/11/2018, is not maintainable. In any event, as discussed in the judgment, there is power with the Government, to fix timings of opening and closing of the shops, under the Tamil Nadu Shops and Establishments Act, 1947, for ensuring public safety.

32. In view of the above observation, the respondents are directed to place the minutes before the Government of Tamil Nadu, for further proceedings. State of Tamil Nadu, is directed to take a decision, fixing the time limit in terms of the Act, and keeping in mind the requirement of the area, after following the procedures in Section 13 of the Tamil Nadu Shops and Establishments Act, 1947, within a period of eight weeks, from the date of receipt of a copy of this order.

33. Writ Petitions are disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Secretary
Home Department, Fort St. George
Chennai 600 001.
2. The Deputy Commissioner of Police
R 3 Police Station
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6. The Commissioner of Police,
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No.132, EVK Sampath Road, Veppary, Chennai
7. The Deputy Commissioner (Revenue and finance)
Greater Chennai Police,
Chennai .

+1cc to Mr.G.Thyagarajan, Advocate SR.No. 46439

+1cc to Mr.K.Soundarajan, Advocate SR.No. 46418

+1cc to Mr.Vijayan Subramanian , Advocate SR.No. 47743

Writ Petition Nos.5361 of 2018
and 3937 of 2019

A.SK(29/08/2019)